

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA, §
§
Plaintiff, § § Criminal No. 3:11-CR-168-D (01)
VS. §
§
GREGORY LASHON THOMAS, §
§
Defendant. §

MEMORANDUM OPINION
AND ORDER

Defendant Gregory Lashon Thomas’ (“Thomas”) April 5, 2018 motion for sentence reduction is denied.

Thomas was convicted following a jury trial of the offenses of conspiracy to commit mail fraud and mail fraud in connection with a mortgage-fraud scheme. The court sentenced him to 189 months’ imprisonment. His guidelines calculation of a total offense level of 31 included a 4-level role adjustment under Guideline 3B1.1(a) for being an organizer or leader. The Fifth Circuit affirmed his conviction and sentence on appeal. *United States v. Thomas*, 548 Fed. Appx. 987 (5th Cir. Dec. 16, 2013) (per curiam).

Thomas moves for a sentence reduction under 18 U.S.C. § 3582(c)(2), which authorizes the court to modify a sentence “in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission.” Thomas maintains that, in Amendment 794, the

Sentencing Commission lowered the sentencing range, and that he is entitled to a minor role adjustment under the amended guideline.

District courts may reduce a defendant's term of imprisonment if his sentence was based on a sentencing guidelines range that has subsequently been lowered by the Sentencing Commission. This modification of a defendant's sentence proceeds in two parts. First, the district court must determine the defendant's eligibility for a reduction according to Guidelines § 1B1.10. Second, the district court considers the sentencing factors listed in 18 U.S.C. § 3553(a) to determine whether, in the district court's discretion, a reduction is warranted in whole or in part under the particular circumstances of the case.

United States v. Guerrero, 870 F.3d 395, 396 (5th Cir. 2017) (citations, quotation marks, and brackets omitted).

Thomas cannot satisfy the first requirement for a sentence reduction: that he is legally eligible for such a reduction. As the Fifth Circuit explained in *Guerrero*:

In this case, Guerrero fails to show that the district court erred at the first step. Guidelines § 1B1.10 provides that a defendant is eligible for a sentencing reduction under § 3582(c)(2) only if the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment *listed in subsection (d)* of § 1B1.10. Because Amendment 794 is not listed in § 1B1.10(d), the district court correctly determined that this amendment does not make Guerrero eligible for any sentencing reduction.

Id. (citations, quotation marks, and brackets omitted; emphasis in original).

Moreover, even if Thomas could legally qualify for a sentence reduction, the court would deny the motion under the second step, in which it determines in its discretion whether a reduction is warranted in whole or in part under the particular circumstances of the case.

In this case, Thomas received a 4-level increase in the base offense level based on the court's determination that he was the organizer or leader of the mortgage-fraud scheme. *See* PSR ¶ 39. Thomas did not object to that role adjustment enhancement. *See* Sent. Tr. 11 (allocution of government counsel: "Second, Your Honor, something that jumped out to me i[n] reviewing the PSR, is Mr. Thomas has an organizer/leader role in this fraud scheme. There is no objection to that, that he was bringing in others, recruiting the straw buyers, orchestrating and making these deals happen. And I note for the Court that this is not the first time Mr. Thomas has been found to be an organizer or leader of a fraudulent scheme."). The court in its discretion would not now reduce his sentence based on the premise that he only played a minor role.

The motion is denied.

SO ORDERED.

April 10, 2018.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE